

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated June 2, 2006 (hereinafter Office Action) have been considered. Claims 1-26 remain pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Claims 1-4, 6, 8-13, 14, 16, 18-24 and 26 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,658,231 to Nakatsuyama (hereinafter “Nakatsuyama”). Applicant respectfully traverses the rejection because Nakatsuyama does not teach or suggest each of the claimed limitations. Nakatsuyama fails to at least teach presenting the received content item in the user terminal, as claimed. The Examiner appears to assert that Nakatsuyama’s index data corresponds to the claimed content item; however, the cited portions at columns 7, and 8, 13 and 14 do not appear to teach that the index data is presented in the user terminal, as claimed. Nakatsuyama merely teaches that the index (tuning) data is downloaded, stored, and used to receive requested programming data, column 8, lines 51-54. There is no indication that the tuning data 104 is, or would be, presented in the user terminal as the tuning data corresponds to information already requested in the user’s profile data. Without a presentation of correspondence to each of the claimed limitations, the §102(e) rejection is improper.

As each of the rejections set forth in the Office Action (§102(e) and §103(a)) is based upon the Nakatsuyama reference and each of the independent claims include limitations as discussed above, Applicant accordingly requests that each of the rejections be withdrawn.

Moreover, Applicant respectfully traverses the §103(a) rejection based upon the Gerrits *et al.* reference (hereinafter “Gerrits”) because Gerrits is not available as a prior art reference with respect to the instant application. Gerrits is a U.S. patent resulting from an international application that was filed after November 29, 2000, designated the United States, and was published in French. Thus, according to MPEP §706.02(f)(1)(I)(C)(2), Gerrits does not have a 35 U.S.C. §102(e) date and may only be applied as a prior art reference under §§102(a) or (b) as of its publication date. While the international

application for Gerrits was published on November 7, 2002, the instant application should be entitled to a priority date of July 1, 2002 in accordance with MPEP §1893.03(c). Thus, Gerrits was published after the priority date of the instant application and is not “prior art” with respect to the instant application. Applicant accordingly submits that the rejection based upon Gerrits is improper and requests that it be withdrawn.

Without acquiescing to characterizations of the asserted art, Applicant’s claimed subject matter, or to the applications of the asserted art or combinations thereof to Applicant’s claimed subject matter, Applicant has also amended independent Claims 1, 11, and 21 to characterize that the content item is presented in a user terminal during the presentation of a broadcasted broadcast media stream. Support for these changes may be found in the instant Specification, for example, at page 6, lines 12-23 and therefore the changes do not introduce new matter. Nakatsuyama does not teach a content item presented in a user terminal during the presentation of a broadcasted broadcast media stream as discussed above. Also, because the asserted index (tuning) data 104 is used to receive requested information (programming), the tuning data 104 is used prior to receiving or presenting a broadcasted media stream. For at least these reasons, Applicant submits that each of the claims is patentable over the cited references.

It should be noted that Applicant does not acquiesce to the Examiner’s statements or conclusions concerning what would have been obvious to one of ordinary skill in the art, obvious design choices, common knowledge at the time of Applicant’s invention, officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner’s characterizations, conclusions, and rejections in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (KOLS.152US) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact him at to discuss any issues related to this case.

Respectfully submitted,

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